

SERVICE DATE – APRIL 14, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 657 (Sub-No. 1)

MAJOR ISSUES IN RAIL RATE CASES

Decided: April 10, 2006

On February 27, 2006, we issued a notice of proposed rulemaking to address major issues regarding the proper application of the stand-alone cost (SAC) test in rail rate cases and the proper calculation of the floor for any rail rate relief. See Major Issues in Rail Rate Cases, STB Ex Parte No. 657 (Sub-No. 1), et al. (STB served Feb. 27, 2006) (NPRM). We sought comments on proposals to address six issues raised in recent SAC cases. See NPRM at 2. Of relevance here, one of those proposals is to rely on the Uniform Rail Costing System (URCS) Phase III movement costing program to calculate the floor on rail rate relief, disallowing any movement-specific adjustments other than those made automatically by URCS.¹ Together, the six proposals were designed to ensure that both the SAC test and the jurisdictional floor for rate relief are applied fairly and in conformity with our statutory responsibilities. Because the issues go to the heart of the SAC test and would have industry-wide significance for rail carriers and their captive shippers, all interested parties were invited to comment on the proposed changes.

By a petition filed on March 27, 2006, BP Amoco Chemical Company (BP Amoco) seeks clarification of our decision, or in the alternative, to broaden its scope. Specifically, BP Amoco asks whether issues relating to the propriety of adjustments to URCS variable cost calculations and the indexing of railroad costs in rate cases handled under Rate Guidelines—Non-Coal Proceedings, 1 S.T.B. 1004 (1996) (Simplified Guidelines) are within the scope of this proceeding. If they are not, BP Amoco asks that we broaden the scope of this proceeding to include them.

The Association of American Railroads (AAR) filed a reply in opposition to BP Amoco's request. AAR maintains that the present rulemaking should be limited to issues arising in SAC cases under Coal Rate Guidelines, Nationwide, 1 I.C.C.2d 520 (1985), aff'd sub nom. Consolidated Rail Corp. v. United States, 812 F.2d 1444 (3d Cir. 1987) (Guidelines). AAR argues that the functions and role of variable cost calculations are different in SAC cases than in cases brought under the Simplified Guidelines.

¹ URCS is the Board's "general purpose costing system for all regulatory purposes." See Adoption of the Uniform Railroad Costing System As A General Purpose Costing System For All Regulatory Costing Purposes, 5 I.C.C. 894, 899 (1989).

DISCUSSION AND CONCLUSIONS

As stated, this proceeding was instituted to address major issues regarding the proper application of the SAC test in rail rate cases and the proper calculation of the floor for any rate relief. NPRM at 2. Although our focus in this proceeding is on the handling of SAC cases,² we agree that the particular issues identified by BP Amoco would have some bearing on cases brought under Simplified Guidelines. Under the statute, the Board may investigate the reasonableness of a challenged rate only if the carrier has market dominance over the traffic involved. The statute precludes a finding of market dominance where the carrier shows that the revenues it receives for transporting the movements at issue are less than 180% of its variable costs of providing that service.³ The variable costs associated with the traffic at issue also determine the floor for rate relief, because the Board cannot prescribe a rate below the 180% jurisdictional floor.⁴ Thus, issues regarding the propriety of adjustments to URCS are common to all market dominance inquiries, and the reasons for using unadjusted URCS set forth in NPRM (at 23-27) would apply with equal force to the market dominance analysis and corresponding floor on rate relief in cases brought under Simplified Guidelines.⁵

Accordingly, we clarify that, if our proposal to disallow movement-specific adjustments to variable costs is adopted, that policy would apply to the calculation of the 180% jurisdictional floor in all rate reasonableness cases, whether brought under Guidelines or under Simplified Guidelines. Thus, to participate in the public debate on that issue, BP Amoco should submit its comments on our proposals in this proceeding.

We will not broaden the scope of this rulemaking, however, to address issues specific to cases brought under the Simplified Guidelines. Thus, this rulemaking will not be broadened to provide for a debate over whether adjustments to URCS should be permitted when applying the three-benchmark standard of rate reasonableness described in Simplified Guidelines.⁶ To do so would dramatically enlarge the scope of this proceeding and would extend the proceeding unnecessarily.

² See NPRM at 7 (“Set forth are our proposals with regard to six issues common to virtually all SAC cases.”).

³ 49 U.S.C. 10707(d)(1)(A).

⁴ See West Texas Utils. Co. v. Burlington N. R.R., 1 S.T.B. 638, 677 (1996), aff’d sub nom. Burlington N. R.R. v. STB, 114 F.3d 206 (D.C. Cir. 1997).

⁵ BP Amoco has also identified a subsidiary issue regarding how to update URCS costs to calculate the base-year variable costs.

⁶ See generally BP Amoco Chemical Co. v. Norfolk S. Ry., STB Docket No. 42093, slip op. at 8-9 (STB served June 6, 2005) (stating that, in assessing rate reasonableness in a case brought under Simplified Guidelines, the Board would calculate the variable costs of traffic covered by the complaint, as well as the variable costs of all movements included in the comparison group, using the Phase III URCS program without movement-specific adjustments).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request for clarification is granted to the extent discussed above. The request to broaden the scope of the rulemaking is denied.
2. This decision is effective on the date of service.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams
Secretary